



## DEPARTMENT OF TRANSPORTATION

### MATERIALS TRANSPORTATION BUREAU

WASHINGTON, D.C. 20590

10917

[Docket No. HM-150; Amdt. Nos. 171-38, 172-41]

#### PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

#### PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

##### Radioactive Materials Imported Into the United States

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Final rule.

SUMMARY: These amendments permit packages of Type A and low specific activity radioactive materials which have been prepared in accordance with the quantity limitations of the most recent International Atomic Energy Agency (IAEA) Standards to be imported into the United States (U.S.). These amendments permit such IAEA quantity limitations to be used in place of existing DOT quantity limitations since differences between the two requirements are small and importation of Type A and low specific activity materials would be unnecessarily hindered without these amendments.

EFFECTIVE DATE: March 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. A. W. Grella, Chief, Technology Division, Office of Hazardous Materials Operations, Department of Transportation, 2100 Second Street SW., Washington, D.C. 20590, 202-426-2311.

SUPPLEMENTARY INFORMATION: Most countries of the world, as well as all of the major international transport organizations, have now adopted the most recent standards contained in the IAEA's "Regulations for the Safe Transport of Radioactive Materials, 1973 Revised Edition." In the U.S., the MTB is preparing a notice of proposed rulemaking to bring U.S. requirements in 49 CFR Parts 100-199 for transport of radioactive materials into closer conformity with the 1973

IAEA Standards. It is anticipated that a notice will be issued concurrently with a notice being prepared by the U.S. Nuclear Regulatory Commission (USNRC) proposing to make its regulations (10 CFR Part 71) conform with the IAEA Standards. However, until

those regulatory actions are completed, these amendments authorize the acceptance into the United States, and transport to destination, packages which conform to the 1973 IAEA Standards for Type A or low specific activity radioactive materials.

On May 26, 1977 the MTB published Notice 77-4 in Docket HM-150 (42 FR 27002) proposing the amendments adopted herein. As pointed out in the preamble to that notice, the allowable activity limits for Type A quantities and for low specific activity radioactive materials as set forth in 1973 IAEA Standards are at variance with the limits in the current DOT Hazardous Materials Regulations which are based essentially on 1967 IAEA Standards. Because of this, packages of such materials imported into the United States, while meeting the standards of the originating country or international intergovernmental transport organizations, and meeting the U.S. requirements, except for quantity (activity), cannot be transported in commerce in the U.S. without further repackaging.

A total of seven public comments were received in response to this notice. Four of these, including the USNRC, expressed unqualified support for the proposal. Two other commenters expressed support for its intent, but qualified their support. These qualifications were: (1) "If IAEA limits are used for import, then there would be a need for this to be documented on shipping papers to justify larger amounts." The MTB agrees with this comment, and has therefore included in this amendment a new paragraph 172.203(d)(1)(ix) which requires that the shipping papers for shipments being imported into the U.S. be annotated to indicate that the shipment of Type A or low specific activity materials has been limited in accordance with the 1973 IAEA regulations under the provisions of §171.12. (2) That IAEA limits will only be used when the amount listed exceeds DOT (49 CFR) maximums, thus, discriminating against U.S. shippers. To some extent, the MTB agrees with this comment. As pointed out earlier, however, this amendment is essentially an "interim" step to reduce problems of non-compatibility of U.S. regulations with regulations of other countries and international transport organizations until the U.S. has completed its overall regulatory actions to adopt the 1973 IAEA Standards. Accordingly, a change to reflect this comment has not been made. (3) That confusion might be created due to a "regulatory requirement that a somewhat complex mathematical formula be used to calculate the curie makeup per package." The MTB does not agree with this comment, since in the current DOT regulations and in any regulations

based on 1973 IAEA Standards, the package activity limit for Type A quantities of most radionuclides is expressed specifically in a table. Only in the case of unlisted radionuclides is it necessary to use calculative formulae, and this is the case in both the current DOT regulations and the 1973 IAEA Standards.

Finally, objection to the proposal was received from the U.S. Environmental Protection Agency (EPA). The objection was stated as follows:

EPA's position regarding Docket No. HM-150 is that the continuing use of existing IAEA regulations for radiation protection during the shipment of radioactive materials is unacceptable, since they have not been derived in accordance with U.S. Federal Radiation Protection Guidance. However, if DOT makes a commitment to develop radiation protection regulations for transportation based on the U.S. Guidance during the forthcoming revisions of the IAEA regulations, EPA has no objection to adoption of the proposed rule. This conclusion is based on our belief that although the level of protection afforded by current IAEA regulations appears adequate, it has not been subjected to an "as low as practicable" analysis as required by the U.S. Guidance.

The MTB does not agree with the EPA's contention that neither the current DOT regulations nor the 1973 IAEA regulations were derived in accordance with the principle "that all radiation exposure of the public be maintained . . . as far below the (Federal Radiation Protection) guides as practicable."

It should be emphasized that the current DOT regulations in 49 CFR applicable to radioactive materials have evolved over the years under the rulemaking procedures of 5 U.S.C. 551 et seq. These regulations, based on the 1967 IAEA Standards, became effective on December 31, 1968 (33 FR 14918, Oct. 4, 1968), following a notice of proposed rulemaking and extensive public comments thereon. As pointed out earlier, the DOT and USNRC expect to publish notices in the near future proposing to adopt changes to 49 CFR and 10 CFR based on the 1973 IAEA Standards.

The MTB further contends that it is not necessary for the Department to make "a commitment to develop radiation protection regulations for transportation based on the U.S. Guidance during the forthcoming revisions of the IAEA regulations. . . ." In this context, the EPA is apparently alluding to possible future considerations by the IAEA for changes beyond those already promulgated by that Agency in its 1973 revised regulations. In that regard, there have been some recent indications that IAEA may consider a future examination of some of its standards in light of anticipated new recommendations expected to be issued in the near future by the International Commission on Radiation

Protection (ICRP). In those recommendations, it is expected that ICRP may discuss further the application to the concept of "as low as reasonably achievable" to radiation protection standards and practices.

In light of the above, the MTB concludes that the EPA objection, as stated above, is not actually germane to the issue at hand. The major question is not the adequacy of either the existing DOT or IAEA regulations, whether based on the 1967 or 1973 IAEA Standards, but rather, whether the U.S. should adopt a provision for acceptance of packages from other countries during an "interim" period in which the U.S. regulations are not consistent with the regulations of other countries.

Primary drafters of this document are Alfred W. Grella, Technology Division, Office of Hazardous Materials Operations, and George W. Tenley, Jr., Office of the Chief Counsel, Research and Special Programs Directorate.

In consideration of the foregoing, Parts 171 and 172 of Title 49, Code of Federal Regulations, are amended as follows:

1. In § 171.7 paragraph (d)(10) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

(d) \* \* \*

(10) IAEA "Regulations for the Safe Transport of Radioactive Materials", 1967 Edition and 1973 Revised Edition, Safety Series, No. 6.

2. In § 171.12, paragraph (e) is added to read as follows:

§ 171.12 Import and export shipments.

(e) Notwithstanding the quantity limitations of § 173.389 (c) and (L) of this subchapter, any package of radioactive materials (except for fissile radioactive materials or Type B quantities under § 173.393b of this subchapter) which otherwise conform to the requirements of this subchapter applicable to Type A quantities or low specific activity materials may be offered and accepted for transportation and transported within the United States if—

(1) The package is being imported into the United States, or is passing through in the course of being shipped between places outside the United States;

(2) The country of origin has adopted the Type A quantity limitations and low specific activity materials definition set forth in the IAEA Regulations for the Safe Transport of Radioactive Materials, 1973 Revised Edition; and

(3) The contents of the package have been limited as a Type A quantity or a low specific activity material in accordance with the IAEA Type A quantity limitations and low specific activity materials definition adopted by the originating country.

3. In § 172.203 paragraph (d)(1)(ix) is added to read as follows:

§ 172.203 Additional description requirements.

(d) \* \* \*

(1) \* \* \*

(ix) For a shipment of radioactive materials being offered and accepted for transportation and transported within the United States under the provisions of § 171.12(e) of this subchapter, the shipping paper shall be annotated with the following entry:

This shipment contains packages of Type A/low specific activity radioactive materials limited in accordance with the 1973 IAEA Regulations, pursuant to the provisions of 49 CFR 171.12(e). (Non-applicable entry to be deleted.)

AUTHORITY: (49 U.S.C. 1803, 1804, 1806; 49 CFR 1.53(e)).

NOTE.—The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C. on March 7, 1978.

L. D. SANTMAN,  
Acting Director

Materials Transportation Bureau.  
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